

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

OPENPITTSBURGH.ORG and TRENTON POOL,	}	
	}	No. 2:16-cv-01075-MRH
Plaintiffs,	}	
	}	Judge Hornak
vs.	}	
	}	
KATHRYN BOOCKVAR, in her official capacity as the	}	
acting Secretary of the Commonwealth of Pennsylvania;	}	
DAVID VOYE, in his official capacity as Manager of the	}	
Allegheny County Division of Elections; KATHRYN M.	}	
HENS-GRECO, in her official capacity as an interim	}	
Member of the Allegheny County Board of Elections;	}	
THOMAS BAKER, in his official capacity as an interim	}	
Member of the Allegheny Board of Elections and	}	
ROBERT PALMOSINA, in his official capacity as an	}	
interim Member of the Allegheny Board of Elections,	}	
	}	<i>Electronically Filed.</i>
Defendants.	}	

NOTICE RE SECRETARY OF STATE’S MOTION TO DISMISS

AND NOW, comes the defendant, Secretary Boockvar,¹ by her attorneys, Scott A. Bradley, Senior Deputy Attorney General, and Karen M. Romano, Chief Deputy Attorney General, Chief, Litigation Section, and provides the Court with the following notice:

1. Plaintiffs initiated this constitutional challenge to certain provisions in Pennsylvania’s Home Rule and Optional Plans Law by filing a Complaint on July 22, 2015 (Doc. # 1).
2. Relevant to this Notice, this matter was stayed and administratively closed by Order entered on September 30, 2016. See (Doc. # 56). On January 11, 2019, Plaintiff OpenPittsburgh.Org filed a Motion to Lift Stay (Doc. # 58). The stay was eventually lifted and Plaintiffs were directed to file an amended complaint. See Order Approving Proposed Order

¹ Veronica Degraffenreid was appointed Acting Secretary of the Commonwealth on February, 8, 2021, following the resignation of Secretary Boockvar effective February 5, 2021. However, it does not appear that this change has been yet noted on the docket.

(Doc. # 71), April 2, 2019, and Order Granting Motion for Leave to File Second Amended Complaint (Doc. # 73). Plaintiffs thereafter filed a Second Amended Complaint (Doc. # 74) on May 6, 2019.

3. As with the prior complaints, this action was brought pursuant to 42 U.S.C. § 1983 and was directed against a number of government and election officials from Allegheny County, Pennsylvania (“the County Defendants”). Plaintiffs also added the current Secretary of the Commonwealth, Kathryn Boockvar (“Secretary Boockvar”) as a defendant in this complaint. All defendants were named in their official capacity only.

4. The County Defendants filed a Motion to Dismiss (Docs. # 75-76) on June 6, 2019. Secretary Boockvar filed her Motion to Dismiss (Docs. # 77-78) on June 7, 2019. The Plaintiffs filed their response to the motions (Doc. # 82) and the Court scheduled argument on the motions for October 7, 2019. Following the argument, the Court entered an Order (Doc. # 85), which granted Plaintiffs leave to file a Third Amended Complaint on or before October 28, 2019.

5. Plaintiff’s filed their Third Amended Complaint (Doc. # 86) on October 28, 2019.

6. The Defendants have filed respective motions to dismiss the Third Amended Complaint See (Doc. # 89)(County Defendants), (Doc. # 94)(State Defendants).

7. Plaintiffs responded to the motions. See (Docs. # 96, 99), and thereafter Secretary Boockvar filed a Reply (Doc. # 100).

8. After the Parties filed a Status Report (Doc. # 127) on January 28, 2021, the Court scheduled and held a Remote Status Conference on Monday, February 1, 2021. See (Docs. # 128-130).

9. On February 1, 2021, this Court issued a Text Order (Doc. # 131), which directed, *inter alia*, as follows:

On or before February 16, 2021, counsel for the Commonwealth and counsel for the Allegheny County Defendants shall either (1) file new Rule 12 motions; (2) file notices reaffirming the motions to dismiss presently on the docket as is; or (3) file Answer(s) to the Third Amended Complaint.

10. Pursuant to the foregoing order, the Secretary of State opts to reaffirm the motion to dismiss presently on the docket, at (Docs. # 94-95), as supplemented by her Reply Brief (Doc. # 100) and her Status Report (Doc. # 110), at ¶ 26.

WHEREFORE, the foregoing notice is respectfully submitted to the Court.

Respectfully submitted,

/s/ Scott A. Bradley
Scott A. Bradley, SDAG
PA Attorney I.D. #44627
Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
412.565.3586
sbradley@attorneygeneral.gov

*Counsel for State Defendant -
Kathryn Boockvar*

Date: February 15, 2021